Supreme Court, U.S.
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No. 92-951

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

N. WALTER GOINS, PETITIONER,

-VS-

DALE W. LANG, ET AL., RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

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6 pp

Petitioner, N. Walter Goins, respectfully submits this Reply Memorandum to the Brief in Opposition of Respondents Syndicated Communications, Inc., Syncom Capital Corp., and Broadcast Capital, Inc. (hereinafter "the SBIC Respondents") dated December 18, 1992.

In opposing this Court's review by petition for writ of certiorari, the SBIC Respondents consistently attempt to trivialize and mischaracterize the scope of the issues presented to the Court for review. And, in so doing, the SBIC Respondents wholly ignore the doctrine enunciated by the Court in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). See Respondents' Brief in Opposition at p.7. By attempting to essentially re-write Petitioner's submission to the Court, and by also ignoring the sole stated basis for the denial of default judgment in the trial

court (the United States District Court for the District of Minnesota), the SBIC Respondents attempt to persuade this Court that this is a "premature appeal of an interlocutory order" merely having to do with a "routine dismissal for lack of jurisdiction" in the lower courts.

The SBIC Respondents calculated efforts to read out of the district court order the reasoning for its denial of petitioner's default judgment motion not only ignores the procedural history of the case, but also effectively conceals their likely argument should petitioner have awaited "final judgment" to seek review of the denial of default judgment. As this Court may readily discern, it is probable that upon an appeal after final judgment, these SBIC Respondents would claim that the act of "refiling" in the district court after the bankruptcy court's denial of their motion,

but prior to an order of remand would constitute an informal appeal of the bankruptcy court order under 28 U.S.C. §158(a), which allows for appeals from final and interlocutory orders of bankruptcy judges to the district courts.

Therefore, the effort of petitioner to appeal the denial of default judgment would, after final judgment, become effectively unreviewable because the essential beginning point (or the nature of the first defense by SBIC Respondents) in the case would become procedurally obscure, if not eclipsed--unless the district court's action is reviewed in the context of its actions in passing upon the availability of removal and the SBIC Respondents' original footing in the case. Compare Connecticut National Bank v. Germain, 60 L.W.4222 (U.S. Sup. Ct.) March 10, 1992.

One can logically conclude that these

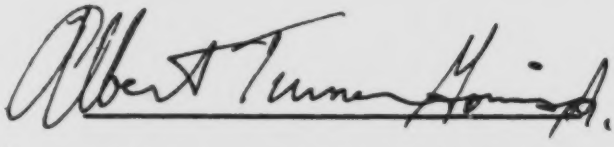
Respondents knew, prior to any order of remand, that this action had not, and could not, be properly removed within the confines of the United States District Court for the Minnesota District to the bankruptcy court and therefore that their first defense in the United States District Court for the District of Minnesota was untimely and the removal ineffectual as to them. The SBIC Respondents may contend this is convoluted and opaque logic, but the petitioner submits their procedural default is as clear as a bell.

Moreover, if this Court should be so naive as the SBIC Respondents now seem to believe, and if this is merely a routine denial of a default judgment--without more--then the Court may expect that the purpose and holding of its earlier decisions regarding the judicial power of the United States will be routinely

ignored through a procedural "shell-game" by parties having no claim or right to evaporate into the bankruptcy court upon being served with a summons in an original action in the Article III federal courts.

Indeed, the Court may, in light of the apparent admission of the SBIC Respondents as to untimeliness of their defense in the district court and the failure to argue the propriety of the removal, reverse summarily on the merits and grant petitioner the relief sought in the district court against the SBIC Respondents.

Respectfully submitted,



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December 24, 1992